

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF NEW YORK

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THOMAS M. FLOHR d/b/a EMERGING  
MARKETS GROUP,

Plaintiff,

- against -

INTERNATIONAL BUSINESS ASSOCIATES, LTD.,  
INTERNATIONAL BUSINESS ASSOCIATES  
HOLDINGS CO., LTD, INTERNATIONAL BUSINESS  
ASSOCIATES (USA), INC, JOHN KEAN, JR.,  
STANLEY J. BROWNELL, and  
HARKEN ENERGY CORPORATION,

Defendants.  
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No. 07 CV 2920 (RWS)

ECF CASE

**REPLY DECLARATION OF ELMER A. JOHNSTON**

**REPUBLIC OF ARGENTINA, ss.:**

Elmer A. Johnston declares:

1. I am The Vice President, Secretary & General Counsel of defendant Harken Energy Corporation. I make this reply declaration in support of defendants' motion to dismiss the complaint and to compel arbitration. I have personal knowledge of the matters set forth herein.

2. I understand that the instant litigation is a suit about a finders' fee.

According to the Complaint and its attachments, in 2004 plaintiff Thomas Flohr acted as a middleman in a business deal in which Harken Energy invested \$12,500,000 in the Series A Preferred Shares of International Business Associates ("IBA"). Under his finders' fee arrangement, Mr. Flohr was to receive part of his fee at the closing and the balance in installments as IBA redeemed Harken Energy's Series A Preferred Shares. According to a Letter of Intent between IBA and Harken Energy, this redemption would occur on a schedule one IBA's annual after-tax income reached \$2 million.

3. The business of IBA was trading in natural gas. Contrary to the parties' original hopes and expectations, IBA did not succeed, was never profitable, and did not redeem the Series A Preferred Shares from its earnings as the parties had planned. Instead, in January 2006, the Harken/IBA deal was unwound. Pursuant to a Redemption and Release Agreement, dated January 31, 2006 (appended as Ex. B to the Complaint), IBA returned to a subsidiary of Harken what was left of Harken's \$12,500,000 investment, which was \$7,500,000. In § 3.3 of the Redemption and Release Agreement, Harken Energy agreed to indemnify IBA for any fees IBA might owe Mr. Flohr under his Fee Agreement with IBA.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on June 8, 2007.



Elmer A. Johnston